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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,079	06/30/2003	Shai Waxman	P-5752-US	7846
49444 7590 03/20/2007 PEARL COHEN ZEDEK LATZER, LLP 1500 BROADWAY, 12TH FLOOR NEW YORK, NY 10036			EXAMINER SMITH, MARCUS	
			ART UNIT	PAPER NUMBER
			2616	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/20/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/608,079

Applicant(s)

WAXMAN ET AL.

Examiner

Marcus R. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 38-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 38 states it's a machine-readable medium of the claim 31, which is a dependent claim of wireless system. The applicant needs to refer to independent claim 32 or any of its dependent claims. Since 38 refers claim 31, then 39-41 also refer claim 31, rendering all these claims indefinite since claim 31 does not teach a machine readable medium for instructions.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-8, 11-21, and 23-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Awater et al. (US 2002/0110105).

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with regards to claims 1, 11, and 32, Awater et al. teaches:

A method comprising:

detecting, during engagement of a first wireless communication signal, a second wireless communication signal (page 4, paragraph 76: The station has signal reception level detection circuit, 303, that receives the Probe Response frames from other Access points, AP2-3, while still being connected to access point, AP1. Also in paragraph 68, the station has memory that store instructions for the processor.).

with regards to claim 21, Awater et al. teaches:

A wireless communication device comprising:

a dipole antenna (311) to send and receive wireless communication signals (paragraph 75); and

a detector to detect during engagement of a first wireless communication signal a second wireless communication signal (page 4, paragraph 76: The station has signal reception level detection circuit, 303, that receives the Probe Response frames from other Access points, AP2-3, while still being connected to access point, AP1. Also in paragraph 68, the station has memory that store instructions for the processor.).

with regards to claim 28, Awater et al. teaches:

A wireless communication system comprising:

a first access point (AP1) to transmit a first signal (Beacon frames: paragraph 76);

a second access point (AP2) to transmit a second signal (Probe Response frames: paragraph 76);

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a wireless communication device to engage the first signal and, while engaging the first signal, detect the second signal (paragraph 76: The station has signal reception level detection circuit, 303, that receives the Probe Response frames from other Access points, AP2-3, while still being connected to access point, AP1.).

with regards to claims 2, 12, 23, 29, and 33, Awater et al. teaches:

further comprising, upon detection of said second signal, selecting (chooses) to engage either said first or second signals (paragraph 105: Since the station is choosing from access points, that means it also selecting from each signal connecting to each access point.).

with regards to claims 3, 13, 25, and 34, Awater et al. teaches:

wherein selecting to engage comprises applying a criterion (average noise level) relating to a property of either or both said first and second signals (paragraph 104).

with regards to claims 4, 14, and 35, Awater et al. teaches:

wherein selecting to engage comprises comparing a property of the first signal to a corresponding property of the second signal (paragraphs 111-112: The station compares the cost function based on access point's properties.).

with regards to claims 5, 15, and 36, Awater et al. teaches:

wherein selecting to engage comprises comparing a property of the second signal to a threshold value (paragraph 109, the NLST is a threshold level in which the NLAP has to be larger than NLST for each Access Point.)

with regards to claims 6, 16, 26, and 37, Awater et al. teaches:

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wherein selecting to engage comprises: continuing to engage the first signal if a pre-defined criterion is met; and reverting to engage the second signal if the pre-defined criterion is not met (paragraph 113).

with regards to claims 7, 17, 27, 31, and 38, Awater et al. teaches:

comprising engaging the selected signal (paragraph 114).

with regards to claims 8, 18, and 39, Awater et al. teaches:

wherein engaging the selected signal comprises storing data in a buffer (paragraph 68, The station has memory (buffer) that stores data, so it will be inherent that the station stores the data in the memory of selected signal, after engaging that the selected signal.).

with regards to claims 10, 20, 24, 30, and 41, Awater et al. teaches:

wherein detecting the second signal comprises substantially continuously searching (monitors or scan) for the second signal (paragraphs 102 and 104).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Awater et al. (US 2002/0110105) in view of Ludwig et al. (US 6,816,471).

Awater et al. discloses all of the subject matter as described above except for resetting said buffer before storing data in said buffer.

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Ludwig et al. teaches resetting the buffer after handover (column 6, lines 45-60 and column 10, lines 48-67) in order to reduce residual error rate (column 2, lines 1-20).

Therefore it would have been obvious to one having ordinary skill in the art at the time invention was made to reset the buffer as taught by Ludwig et al. in the wireless device of Awater et al. in order to reduce residual error rate.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Awater et al. (US 2002/0110105) in view of Whitehill et al. (US 6,404,756).

Awater et al. discloses all of the subject matter as described above except for the wireless communication device comprises a wireless modem.

Whitehall teaches a node with two modems (primary and secondary) that can communicate with another node while still monitoring for other signals (column 6, lines 30-50) in order to minimize delays (column 2, lines 1-23). It also teaches how must nodes are come with a single modem (column 5, lines 50-60 see figure 1 as Prior art).

Therefore it would have been obvious to one having ordinary skill in the art at the time invention was made to at one or more modems as taught by Whitehall et al. in the wireless device of Awater et al. in order to minimize delays in the system.

### ***Conclusion***

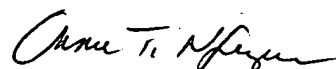
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus R. Smith whose telephone number is 571 270 1096. The examiner can normally be reached on Mon-Fri. 7:30 am - 5:00 pm every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 571 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRS 3/8/07



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